

STATE OF TEXAS
COUNTY OF LUBBOCK
EMPLOYMENT CONTRACT

This Employment Contract (the "Agreement") is made and entered into this _____ day of December, 2018 by and between Texas Tech University, herein called "University" and David Yost, herein called "Coach" (together, the "Parties"). Coach shall be employed upon the terms, conditions, stipulations, covenants and agreements as set forth herein:

I.
TERM

Both parties hereby mutually agree that for and in consideration of the mutual benefits and consideration received or to be received by the parties that Coach shall be employed as Assistant Football Coach at the University for a Term beginning the 1st day of December, 2018 and ending on the 31st day of January 2022 (the "Term"), upon the terms, conditions, stipulations, covenants and agreements as set forth herein.

II.
PRIMARY DUTY ASSIGNMENT

Coach shall be employed as Assistant Football Coach at the University during the period of this Employment Contract.

III.
COMPENSATION AND BENEFITS

A. BASE SALARY

Coach shall be paid the following annual Base Salary during the Term of this Agreement.

December 1, 2018 – January 31, 2019	\$100,000
February 1, 2019 – January 31, 2020	\$600,000
February 1, 2020 – January 31, 2021	\$600,000
February 1, 2021 – January 31, 2022	\$600,000

Payment shall be in accordance with the payroll policies of the University and subject to such deductions as may be required by applicable state and federal laws and regulations. Any change to Base Salary may only be made by a written amendment to this Agreement which is signed by both parties. All University and State of Texas benefits shall be derived from and based exclusively on Base Salary.

B. HEALTH, RETIREMENT, VACATION AND OTHER LEAVE

Coach will be eligible to participate in the same benefits as all other full-time, benefits-eligible University employees. Such benefits shall be governed by University policy and Texas law. Vacation leave shall be taken at such time or times agreed upon between Coach and the Head Football Coach. Coach must report all leave time taken pursuant to University policy.

C. COURTESY CAR

Coach shall receive an annual vehicle allowance in the amount of \$5,000 (Five thousand dollars) to be paid in equal monthly installments.

D. SUPPLEMENTAL COMPENSATION

Except as set forth below, if the University Football Team participates in a postseason game, Coach shall be paid the following bonuses for which the University Team qualifies:

- Big 12 Championship Game – Bonus equal to the greater of one-half month of current Base Salary for participation, or one month of current Base Salary for winning Big 12 Championship Game;

In addition, the greater of the following:

- Non-Playoff Bowl Game or College Football Playoff Bowl Series (non-playoff appearance) - Bonus equal to one month of current Base Salary; or
- College Football Playoff Bowl Game – Bonus equal to two months of the current Base Salary; or
- College Football National Championship – Bonus equal to three months of the current Base Salary.

Such payment shall be paid no later than February 1 following such postseason game. Coach shall not be entitled to receive the foregoing Supplemental Compensation if Coach terminates this Agreement prior to the Football Team playing in such postseason game.

E. TAX LIABILITY

To the extent there are applicable taxes for any payments, perquisites, or benefits set forth above, Coach shall be responsible for payment of such taxes.

IV. **PERFORMANCE**

Coach's day-to-day supervisor, for purposes of this Agreement, shall be the Head Football Coach, who is under the direct supervision of the Director of Intercollegiate Athletics. All administrative matters pertaining to the operation of University's Football Program shall be subject to the ultimate direction and control of the Director of Intercollegiate Athletics. Without limitation of the foregoing, Coach, in the performance of his duties, shall conduct himself at all times in a manner consistent with his position as an instructor of students and as a University ambassador, representative, and key employee. Coach shall promote the encouragement and support of student athletes on the Team regarding personal, physical, and intellectual development, activities, and achievements, including an emphasis on each student athlete's completion of an undergraduate degree program. Coach shall engage in fair, safe, and responsible treatment of student-athletes on the Team and avoiding behavior that could, in any way, jeopardize a student-athlete's health, safety, welfare, or that could otherwise cause harm or risk causing harm to a student-athlete. Coach shall not engage in any behavior, actions or activities that (i) subject either Coach or University to public disrepute, contempt, scandal, ridicule or embarrassment, or that fails to conform to the conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon TTU's reputation and overall primary mission and objectives, including but not limited to, acts of dishonesty, misrepresentation, fraud or violence that may or may not rise to a level warranting criminal prosecution by the relevant authorities; (ii) substantially adversely affects Coach's or University's reputation; (iii) substantially interferes with or substantially diminishes Coach's standing as a University ambassador and representative; or (iv) are substantially contrary to the best interests of the University, its students, or its athletic program ("Objectionable Behavior"). The determination of whether Coach has engaged in Objectionable Behavior will be in the sole discretion of the Director of Intercollegiate Athletics. The Parties agree that, although this Agreement is sports related, the primary purpose of the University and this Agreement is educative. Thus, the educative purposes of the University shall have priority in the various provisions of this Agreement. Coach will follow all applicable University policies and procedures as well as applicable Texas and federal law. Coach shall not, either directly or indirectly, breach, or countenance the breach, by any player or coach subject to his control or supervision, of any of the rules and standards of the Big 12 Conference, the National Collegiate Athletic Association (NCAA), as well as other associations or agencies to which the Texas Tech University adheres. Coach understands that he is presumed to be responsible for the actions of all assistant coaches and other administrators who report, directly or indirectly to him. Coach understands that he has an affirmative obligation to cooperate fully in any investigation or infractions process in which the University is involved, including but not limited to the investigation and adjudication of a case as defined by the NCAA. Failure to do so may result in sanctions to be determined in the sole discretion of the University's President, in consultation with the Director of Intercollegiate Athletics, which may include but not be limited to fines, suspensions, or termination with cause pursuant to Section V.A. below. Coach shall promote an atmosphere of compliance within the

Football program and shall monitor the activities of all assistant coaches and other administrators involved with the program who report, directly or indirectly to him. In this connection, Coach agrees to devote the coach's entire time, labor, effort and attention, in good faith, to conduct and perform the duties commensurate with the position as Assistant Football Coach, and shall fulfill all job responsibilities in a timely, thorough, constructive, cooperative, and positive manner, including responsibility for appraisals, administrative processes, and attendance at required meetings. Coach shall adhere to the University's policies or state and federal law regarding sexual misconduct and shall immediately report to the University's Title IX Coordinator any potential violation of such policies or laws, including but not limited to, sexual harassment, sexual assault, sexual exploitation, intimate partner violence, or stalking, involving student-athletes, staff, coaches or that is in connection with a University sponsored event. Any emergency situation should immediately be reported to 911 and/or law enforcement. Breach of the standards set forth in this Section IV, whether willful or through negligence, may be subject to disciplinary action and penalties ranging from termination, suspension, public or private reprimand or monetary fines or adjustments in compensation or adjustments in the term of this Agreement as determined by the Director of Intercollegiate Athletics. The provision of this paragraph shall be without prejudice to any right the University may have under Section V of this Contract.

Unless notice of termination of employment has been given to Coach in accordance with Articles V.A. or V.D. below, Coach shall not engage in, or direct others to engage in on his behalf, discussions or negotiate, either directly or indirectly, concerning Coach's prospective employment by any other employer without first providing prior written notice to the Director of Intercollegiate Athletics of such discussions or negotiations. Failure to provide such notice may be considered a material breach of this Agreement.

V.
TERMINATION

A. FOR CAUSE:

The University specifically reserves the right to terminate this Agreement for Cause. Such Cause shall include but is not limited to the following: violation(s) of Section IV above; negligent or intentional failure or refusal to perform assigned duties to the reasonable satisfaction of the Head Coach or Director of Intercollegiate Athletics; violation(s) of the governing policies, rules, regulations and procedures of the University, Texas or federal law, any athletic conference of which the University is a member, or a Level 1 or Level 2 violation or multiple Level 3 or Level 4 violations of NCAA rules or countenance of such violations by a member of University's Department of Intercollegiate Athletics' staff who Coach directly supervises, or failure to report such known or suspected violations as set forth in Section IV above; Coach's serious violation of local, state, or federal laws; Coach's commission of an act of moral turpitude, or Coach's engaging in Objectionable Behavior. In the event this Agreement is terminated by University for Cause, the University's sole obligation to

Coach shall be to pay his Base Salary until the effective date of termination in addition to any unpaid Supplemental Compensation that has been earned as of the date of termination. In no event shall the University be liable to Coach for the loss of any collateral business opportunities or any form of consequential damages resulting from or associated with Coach's employment.

B. TERMINATION WITHOUT CAUSE BY UNIVERSITY:

In addition to the provision set forth above, the University reserves the right to terminate this Agreement without cause at any time. The parties agree that in the event this right to terminate is exercised, University will pay 70% (Seventy percent) of the remaining annual Base Salary as set forth in paragraph III.A. in monthly installments beginning one month after the date of termination provided, however, that University's obligation to pay Coach as set forth in this paragraph shall be reduced by the total compensation received by Coach from all sources directly related to any employment ("Subsequent Compensation") during the remaining Term of this Agreement (not including the employee benefits costs associated with such employment) so long as the total compensation is at an actual market rate for such similar positions ("Actual Market Rate"). Coach shall provide to University any and all documentation of Subsequent Compensation immediately upon accepting other employment. Failure to provide such documentation within 30 days of beginning subsequent employment will void University's obligation to pay any remaining Base Salary.

Actual Market Rate herein shall be defined as the average total compensation for the position among public universities in the conference of the new collegiate institution, utilizing available compensation sources (e.g., USA Today salary survey, WINAD, and other coaching compensation databases). The University reserves the right to adjust the compensation due and owing if Coach's new compensation appears contrived to rely upon payments to Coach by the University. Examples would include, but are not limited to, if Coach's new position apportions compensation so that it increases or balloons after the University's payments to Coach cease, or the subsequent employment arrangement otherwise attempts to avoid the intended net effect of this provision, Coach expressly agrees that the University shall assign a market value of compensation to Coach's new position based upon its assessment of similar positions. For the purposes of this Section V(C), "employment" shall mean working as an employee for another employer, as a consultant, as a self-employed person, or as an independent contractor. For the purposes of this Section V(C), Subsequent Compensation shall mean any and all compensation received through Coach's employment, including, but not limited to, base salary, non-salary compensation, consulting fees, bonuses, and any other compensation.

In the event of termination without cause under this paragraph, the University shall not be liable to Coach for any other University benefits,

perquisites or any collateral business opportunities, outside income revenues or other benefits associated with Coach's position as coach. In addition to the payment of remaining Base Salary above, University shall pay Coach any earned but unpaid Supplemental Compensation as set forth in paragraph III.D.

C. INABILITY TO PERFORM:

In the event of the inability of Coach to continue to perform his obligations under this Agreement by reason of a substantial physical or mental illness, injury, or some other occurrence beyond the control of either party hereto, and such inability to perform has continued or will continue beyond a period of at least ninety (90) days within a 120-day period which cannot reasonably be accommodated by the University and which prevents Coach from being able to perform essential functions of the duties and responsibilities set forth herein, the University reserves the right to terminate this Agreement. In such event, all future obligations between the parties hereto shall cease.

D. TERMINATION WITHOUT CAUSE BY COACH:

In the event Coach terminates his employment at University to accept a coaching position at another NCAA Division 1-A institution prior to the last football game (regular or post-season) during the Term, Coach or Coach's designee shall pay University a lump sum amount equal to \$250,000 (Two hundred fifty thousand dollars) no later than 60 days after Coach's acceptance of employment at such other Division 1-A institution. All other obligations of the parties shall cease effective the date of resignation.

For purposes of this paragraph, Coach shall be deemed to have terminated his employment at University in order to accept a position as a position coach at another institution if Coach accepts such position at another NCAA Division 1-A institution within one-year after terminating his employment at University.

E. TERMINATION RELATED TO HEAD FOOTBALL COACH:

Coach acknowledges that this Agreement will terminate immediately at such time as the Head Coach at the time of the execution of this Agreement is no longer the Head Football Coach at University. Coach will be paid Base Salary, less applicable withholding, on a monthly basis for a period not to exceed 120 days if Coach is unable to find other employment in a coaching capacity. Unless Coach is required to perform other duties as directed by the Director of Intercollegiate Athletics, Coach shall report all such time as vacation until all of Coach's vacation time is exhausted. All obligations under this Employment Contract shall cease immediately upon Coach's accepting other employment in a coaching capacity if such new employment occurs within 120 days of termination of this Employment Contract under this provision.

F. LIQUIDATED DAMAGES

The Parties have bargained for and agreed to, and consequently are bound by, the liquidated damages provisions in Sections V(B) and V(D) above. The Parties agree and acknowledge the unique, specialized and exclusive nature of collegiate coaching and the difficulty in calculating damages in the event of a breach. The Parties acknowledge the competitive environment of collegiate football coaching. The Parties recognize and acknowledge the valuable coaching and recruiting knowledge and relationships that Coach will develop with players, recruits, high schools, junior colleges, staff, coaches, alumni and donors while employed by the University and the difficulty the University will have in replacing that knowledge and those relationships. Coach understands and acknowledges that upon his departure, he will have unique and specialized knowledge of the University's schemes and tendencies. The Parties understand and acknowledge the special need for continuity in the University's football program. The Parties agree that Coach is highly compensated and that the University is making a substantial monetary investment in Coach. The Parties further understand and recognize the cost, difficulty and uncertainty with replacing Coach. The Parties agree and understand that ticket sales and television contracts are in part tied to the success of the Coach and the program. The Parties agree that payment of such liquidated damages shall constitute adequate and reasonable compensation for damages suffered because of termination without cause by the University, or because of termination without cause by Coach. The liquidated damages shall not be construed as a penalty. The liquidated damages provisions shall apply only to termination pursuant to Section V(B) of this Agreement for termination without cause by the University, and termination pursuant to Section V(D) of this Agreement for termination without cause by Coach;

E. MUTUAL AGREEMENT:

The parties reserve the right to terminate this Employment Contract by mutual agreement. In the event the right to terminate pursuant to this paragraph is exercised, all liability of the parties shall cease effective the date of termination.

VI.
PUBLIC APPEARANCES

Coach shall make no public appearance, either in person or by means of radio or television, or willingly allow the use of his name in connection with his relationship to the University when any such appearance or use of name will result in unfavorable reflection upon the University. Coach will neither participate in, nor allow his name to be used in connection with any particular athletic equipment and/or commercial activity that in any way conflicts with University's sponsors or providers.

VII.
ATHLETICALLY-RELATED INCOME AND BENEFITS

Coach shall report any athletically-related income or benefits (e.g. income from endorsement or consultation contracts with apparel companies, equipment manufacturers, television and radio programs; income from ownership, control or management of a foundation, organization, or other entity, etc.) in the amount of \$600 (six hundred dollars) or more to the University's President no later than August 31 of each year during the Term.

VIII.
REPRESENTATIONS

It is mutually understood that this Employment Contract contains all of the terms and conditions to which the parties have agreed and that no other understandings or representations, either oral or written, unless referenced in the preceding paragraphs, regarding the subject matter of this Employment Contract shall be deemed to exist or to bind the parties hereto and that any modification, amendment or addendum to this Employment Contract shall only be by written instrument signed by each party hereto.

IX.
INTERPRETATION

No provision or part of this Employment Contract which shall prove to be invalid, void or illegal shall in any way affect, impair or invalidate any other provision or part, and such other provision and parts shall remain in full force and effect.

X.
APPLICABLE LAW

This Agreement is made and entered in Lubbock County in the State of Texas; the laws of Texas shall govern its validity and interpretation and the performance by the Parties of their respective duties and obligations under this Agreement. The Parties agree that any matter related to or arising out of the Agreement shall be resolved in accordance with laws of the State of Texas, without giving effect to its conflict of laws provisions, and venue for any proceedings shall be in Lubbock County, Texas.

Coach has been advised to have this Employment Contract reviewed by counsel familiar with employment agreements before agreeing to the terms and conditions contained herein.

XI.
EMPLOYMENT MATTERS, FORCE MAJEURE, AND BOARD
APPROVAL

This Agreement is intended as the sole source of Coach's employment rights, irrespective of any statement contained in any University employment

manual, staff manual, or any other similar document pertaining to University staff or faculty.

If either party is unable to perform any obligation under the Agreement because of acts of nature not within the control of that Party, then the performance of both Parties is excused until such matters are resolved to the extent that performance may resume.

This Agreement is contingent on the results of your completed criminal history investigation, verification of the information provided to us during the interview process, completion of all new hire paperwork, and is subject to the approval from the Texas Tech Board of Regents.

IN WITNESS WHEREOF, the parties hereto shall consider this Employment Contract to be effective on the 1st day of December, 2018.



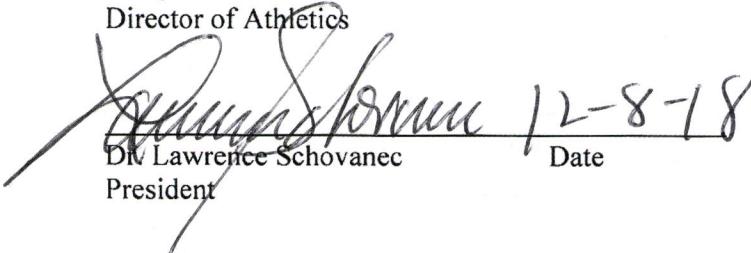
12-7-18

David Yost Date

Assistant Football Coach

Kirby Hocutt 12.7.18
Digitally signed by Kirby Hocutt
DN: cn=Kirby Hocutt, o=Texas Tech
University, ou=Athletics,
email=kirby.hocutt@ttu.edu, c=US
Date: 2018.12.07 15:03:03 -06'00'

Kirby Hocutt Date
Director of Athletics



12-8-18

David Lawrence Schovanc Date

President